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Summary of expected modifications to the United Nations Model Double Taxation Convention between Developed and Developing Countries and commentaries for the 2017 update: articles 9, 12 and 13

Note by the Secretariat

The annexed table contains a summary of issues discussed by the Committee of Experts on International Cooperation in Tax Matters with respect to modifications to articles 9, 12 and 13 of the United Nations Model Double Taxation Convention between Developed and Developing Countries. The table provides information about the work that has already been done and the work that is to be accomplished by the end of June 2017, when the membership of the Committee will change. The column entitled "Status at 14th Session of the Committee" is therefore intended to guide discussion and decision-making during the fourteenth session of the Committee.

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Annex

Summary of expected modifications to the United Nations Model Double Taxation Convention between Developed and Developing Countries and commentaries for the 2017 update: articles 1, 5 and 8, and one general change*

Topic	*9th Session of the Committee*	*10th Session of the Committee*	*11th Session of the Committee*	*12th Session of the Committee*	*13th Session of the Committee*	*Status at 14th Session of the Committee*
Art. 9 Associated enterprises	The Committee mandated the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing to: (a) present a draft revised commentary on Article 9 for discussion and decision at the tenth session of the Committee, in 2014; and (b) to work on the updating of the Manual, with reports on its progress to be made at each session and with the Subcommittee's final updated draft manual to be provided for discussion and adoption at the twelfth session, in 2016.	– The Committee discussed the revision of the commentary on Art. 9 (E/C.18/2014/4) – The Committee, at the 10th Session, noted the importance of referring to the Transfer Pricing Manual in the commentary, although they considered it best to replace the words "seeks broad consistency" in the last sentence of the proposed paragraph 4 of the commentary with "seeks consistency" to be consistent with the formulation in the foreword of the Manual. – It was agreed that the proposal of one member to add a sentence to the commentary on Article 9 (2) on alternative methods and another proposal to provide alternative wording in the commentary on Article 9 (3), for countries in which gross negligence and willful default were not liable to penalty, would be added to the catalogue of issues for future updates.	– Focus shifted to update of the United Nations Practical Manual on Transfer Pricing for Developing Countries.	The 12th Session Approved the new version of the United Nations Practical Manual on Transfer Pricing for Developing Countries.	Update on editorial process for the Manual.	Already decided (pursuant to 10th session decisions): – Additional sentence to the commentary to Art.9 (2) on alternative methods and alternative wording in the commentary on Art. 9 (3), for countries in which gross negligence and willful default were not liable to penalty. – Revised Commentary to Art. 9 in order to refer to the Transfer Pricing Manual.

* The present annex is beingt issued without formal editing.

Topic	9th Session of the Committee	10th Session of the Committee	11th Session of the Committee	12th Session of the Committee	13th Session of the Committee	Status at 14th Session of the Committee
Art. 12 Royalties:						
1. General considerations incl. equipment-related issues	**1. General considerations incl. equipment-related issues** – The Committee requested the Secretariat to draft a paper covering specific relevant aspects, including equipment-related issues as well as issues that could have an impact on technical services provisions.	**1. General considerations, incl. equipment-related issues** – The Secretariat presented a paper at the tenth session of the Committee in 2014 (E/C.18/2014/3), addressing in particular the differences between the UN and OECD Model Conventions on Royalties. – The Committee asked the Secretariat to prepare a note with proposed text aimed at clarifying the meaning of the term "industrial, commercial or scientific equipment" in the commentary on Art.12. The paper should also deal with the issue of coverage or otherwise of software-related payments under the article.	**1. General considerations, incl. equipment-related issues** At the eleventh session of the Committee in 2015, the Secretariat's note (E/C.18/2015/CRP.7), as well as a paper prepared and presented by Mr. Scott Wilkie at the Secretariat's request (E/C.18/2015/CRP.6), were taken up by the Committee and the Subcommittee on Royalties (Subcommittee) was formed to further investigate those issues.	**1. General considerations, incl. equipment-related issues** The Committee discussed possible amendments to the commentary on Article 12 in relation to: issues in relation with the characterization of consideration derived from leasing of rent of Industrial, commercial or scientific equipment; Software-related payments.	**1. General considerations, incl. equipment-related issues** No discussion of Industrial, commercial or scientific equipment and software-related payments, pending Subcommittee on royalties meeting in Feb 2017.	**1. General considerations, incl. equipment-related issues** Discussion on Industrial, commercial or scientific equipment and software related payments, depending on Subcommittee on royalties meeting in Feb 2017.

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2. Subcommittee on Services	**2. Subcommittee on Services** – The Committee established a new Subcommittee to be coordinated by Ms. Kana and mandated to: (a) broadly address the taxation of services; and (b) address the particular issue of taxation of fees for technical services by presenting wording, including various options, for the text of the article on technical services, and the commentary, at the tenth session.	**2. Subcommittee on Services** – It was agreed that there should only be one article in the Model Convention; however, a new alternative version of the text of the article would be drafted with a view to its inclusion in the commentary. Those Subcommittee members who preferred an alternative option with less broadly expressed coverage were accordingly asked to put forward such text. It was agreed that the commentary should address the pros and cons of both the new article and the alternative options fairly, and in particular those that felt that the cons were not well explained were invited to put forward draft text that could be inserted in the draft commentary. – It was agreed that the Subcommittee would report on the advancement at the next meeting, in accordance with the mandate for a draft new technical service article to be included in the 2016 update of the Model Convention.	**2. Subcommittee on Services** – The wording of the article and the minority view for the commentary on the new article were discussed in detail and agreed upon by the Committee. Committee members were invited to raise issues not yet discussed with the Subcommittee regarding the wording of the draft commentary. – It was also agreed that a minority approach of addressing the issue of fees for technical services by adding proposed	**2. Subcommittee on Services** – The Committee approved the text of the Model, and commentaries – The dissenting countries agreed to draft the minority opinion.	**2. Subcommittee on Services** – The Committee discussed consequential changes as a result of the addition of a new article on Technical Services. – The Committee agreed that there would not be a complete renumbering of the Model, and the new article on fees for technical services would be included as Article 12 B of the Model.	**2. Subcommittee on Services** Already decided (pursuant to 12th and 13th session decisions): – Include new proposed Article 12 B on Technical Services and introduce new commentary to Article 12 B. – Add Minority view from countries which have issues with the application of Article 12 B, prefer a more limited provision or would prefer inclusion as part of existing Royalties article. – Deal with consequential modifications to Article 23 A (2) and 24 (4), as a result of the introduction

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			wording to Article 12 (Royalties), as an alternative, would be addressed in relevant commentaries. It was further decided that the Subcommittee should draft, for possible inclusion in the commentary, an alternative, originally proposed as a possible compromise solution in the Subcommittee, which avoided reference to specific types of services and instead addressed taxation by a State of all services performed in that State, as well as services performed			of the new Article 12 B, as well as any other consequential changes.

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			outside that State by related parties. In this context, it was noted that the relationship with Article 5 (3) (b) would need to be considered.			
Art.13 Capital gains:						
1. The practical implications of para. 4	**1. The practical implications of para. 4**	**1. The practical implications of para. 4**	**1. The practical implications of para. 4**	**1. The practical implications of para. 4**	**1. The practical implications of para. 4**	**1. The practical implications of para. 4**
	Issue deferred to the 10th Session of the Committee.	Ms. Saksena presented a paper on the practical implications of Article 13 (4) (E/C.18/2014/CRP.13), based on 14 responses to a questionnaire on country practices regarding Article 13 (4) of the Model Convention.	Not included as an agenda item.	Only included as an agenda item in context of BEPS.	Only included as an agenda item in context of BEPS.	Only included as an agenda item in context of BEPS.
2. Base Erosion & Profit Shifting	**2. Base Erosion & Profit Shifting**	**2. Base Erosion & Profit Shifting**	**2. Base Erosion & Profit Shifting**	**2. Base Erosion & Profit Shifting**	**2. Base Erosion & Profit Shifting**	**2. Base Erosion & Profit Shifting**
	BEPS issues not an agenda item.	BEPS issues not an agenda item.	BEPS issues not an agenda item.	Initial discussion of possible changes to Article 13 (paragraphs 4 and 5).	Possible treaty revision of Article 13 (paragraphs 4 and 5 broadly following the OECD's Action Plan recommendations) proposed and	For Decision: Exact wording of Treaty revision of Article 13 (paragraphs 4 and 5 broadly following the OECD's Action Plan

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					discussed. Agreed with some issues of coverage.	recommendations) and commentaries to be settled.